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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,617	02/05/2004	John P. Streich	0275Y-227DVD	5076

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EXAMINER

LUGO, CARLOS

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,617

Applicant(s)

STREICH ET AL.

Examiner

Carlos Lugo

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-32, 34, 66 and 67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-27, 30-32 and 34 is/are rejected.
- 7) ☒ Claim(s) 28, 29, 66 and 67 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to applicant's preliminary amendment filed on February 5, 2004.

Claim Objections

2. **Claim 26 is objected** to because of the following informalities:

- Claim 26 Line 1, change "said latch comprised" to -said latch is comprised-.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. **Claim 34 is rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 34 recites the limitation "the tool container according to claim 32" in line 1. Further, the claim recites some limitations regarding the container.

However, it is unclear what the applicant is trying to claim as his invention in claim 34, since claim 32, which depend from claims 21 and 26, is referring to a latch. Therefore, in order to continue with the examination, the claim would not be considered until an appropriate correction and/or explanation by the applicant is submitted to clarify the issue.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 21,22,26,27, and 30 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 1,623,610 to Zeindlhofer.

Regarding claim 21, Zeindlhofer discloses a latch for a container comprising a body (7 and 13) and a channel for receiving a rail (5 and 6). The channel defines an arcuate base surface, two sidewalls extending from the base and two flanges extending from the sidewalls towards one another (Figures 5 and 6).

As to claim 22, Zeindlhofer illustrates that the base surface is arcuate along both a longitudinal and lateral axis (Figures 5 and 6).

As to claim 26, Zeindlhofer discloses that the latch is comprised of a first member (13) covered by a second member (7).

As to claim 27, Zeindlhofer illustrates that the first member (13) is capable of provide rigidity to the latch.

As to claim 30, Zeindlhofer discloses that the body having an arcuate outer surface enables manipulation by a user.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3676

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claim 23 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 1,623,610 to Zeindlhofer as applied to claim 21 above, and further in view of US Pat No 4,576,307 to Frydenberg.

Zeindlhofer fails to disclose that one of the flanges includes a cutout enhancing coupled with the rails.

Frydenberg teaches that it is well known in the art to have a latch (16 and 30) that comprises opposing flanges, wherein at least one flange includes a cutout enhancing that would be coupled with the rails (at the sides of 18).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the latch member described by Zeindlhofer with a cutout at either flange, as taught by Frydenberg, in order to help in the insertion of the latch around the rails.

9. **Claims 24,25, and 31 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 1,623,610 to Zeindlhofer as applied to claim 21 above, and further in view of US Pat No 4,153,178 to Weavers.

As to claims 24 and 25, Zeindlhofer fails to disclose that the latch includes indicia indicating a locked and unlocked position and indicating direction of movement.

Weavers teach that it is well known in the art to have a latch (22) that includes indicia indicating a locked and unlocked position and indicating direction of movement (Figure 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the latch described by Zeindlhofer with indicia, as taught by Weavers, in order to indicate the user how to unlock or lock the latch.

As to claim 31, Zeindlhofer fails to disclose that the second member (7) is a soft material providing a gripping surface. Zeindlhofer discloses that the second member (7) provides a gripping surface.

Weavers teaches that it is well known in the art to have the member having the gripping surface (22) made of a soft material (flexible plastic, Col. 2 Lines 22 and 23).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the second member described by Zeindlhofer with a soft material, as taught by Weavers, in order to give a softer gripping surface at the time the latch is used.

10. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 1,623,610 to Zeindlhofer as applied to claims 21 and 26 above, and further in view of US Pat No 5,275,027 to Eklof et al (Eklof) and further in view of US Pat No 4,153,178 to Weavers.

Zeindlhofer fails to disclose that the first member is formed from polypropylene and the second member formed from krayton.

Weavers teaches that it is well known in the art to use polypropylene as a material to make a member of a latch (Col. 3 Lines 10-15).

Eklof teaches that krayton is also a well-known material to make a member of a latch (Col. 4 Lines 29 and 30).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use materials as polypropylene and krayton, as taught by Weavers and Eklof, to make or manufacture a latch as described by Zeindlhofer, since the selection of a known material based upon its suitability for the intended use is a design consideration within the level of skill of one skilled in the art.

Allowable Subject Matter

11. **Claim 28 is objected** to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 29,66, and 67 would also be allowed because the claims depend from claim 28.

Reasons For Allowable Subject Matter

12. The following is an examiner's statement of reasons for allowable subject matter:

Claim 28 presents allowable subject matter over the prior art of record because the teachings of the references taken as a whole do not teach or render obvious the combination set forth, including that a portion of the first member extends through the second member.

Zeindlhofer discloses that the latch is composed of a first (13) and a second member (7). However, Zeindlhofer fails to disclose that the first member extends through the second member.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number 571-272-7058. The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

C.L.

Carlos Lugo
AU 3676

August 3, 2005.



BRIAN E. GLESSNER
PRIMARY EXAMINER